

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 402 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DANIBEN D/O PALABHAI GANESHBHAI

Versus

CHHAGANBHAI TEJABAI RATHOD

Appearance:

MR DN TRIVEDI for Petitioner

MR HM PRACHCHHAK for Respondent No. 1

MR BY MANKAD ADDL PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 22/09/1999

ORAL JUDGEMENT

#. Rule. Mr.Prachchak, learned advocate for respondent No.1 and Mr.B.Y.Mankad, learned APP for the respondent No.2 - State waive service of rule.

#. The grievance of the petitioner wife is that her revision application preferred against the dismissal of the maintenance application has not been registered

because the same was filed beyond time. The delay condonation application preferred before the learned Sessions Judge has been rejected under the impugned order dated 11th May, 1999. According to the petitioner, the revision was delayed by 78 days as she was sick and bed ridden. It was also contended by her that once she was advised that revision can be filed within 90 days, so her immediate efforts to prefer revision application had gone in vain because of such advise given by the learned advocate appearing for her. I agree that the prescribed period limitation is of 90 days as prescribed under Section 131 of the Limitation Act but subsequent sickness ought to have been considered seriously. Non production of the medical certificate ought not to have been given much weightage when an aggrieved lady approaches the higher forum to get an amount of maintenance from her legally married husband. The original Court i.e. the Court of learned JMFC has not accepted the version of the revisioner and therefore, her maintenance application was rejected. By holding the finding of the lower Court, the Additional Sessions Judge can refuse to accept the case put forward by the petitioner. Such non acceptance of the case of the petitioner by the learned Sessions Judge is one thing and implied refusal to hear the case on merits by rejecting the revision application on technical grounds like limitation is something else. At the time of rejecting such application, the superior Court should consider the effect of such rejection. Rejection of the condonation of delay has resulted into miscarriage of justice and impliedly the finding of the first court has become the finding of the last court so far as present petitioner is concerned. Even though, the petitioner was not sleeping in slumber but had approached her advocate immediately after rejection of her maintenance application.

#. Time and again, it is stated that by this Court as well as by the Hon'ble Apex Court that approach of the Court in such cases should be pragmatic and very liberal. Difficulties for female to approach the Court are from various corners. Non production of the medical certificate ought to have been considered treating the same as the technical error instead of rejecting the application on this ground. The petitioner ought to have been afforded an opportunity to produce the medical certificate by granting some time. It was even open for the court concerned to dispense with the production of the medical certificate if the court is satisfied that the ground of sickness advanced by the applicant is genuine. Even while rejection, there was no written resistance from the other side and the allegation and

averments in the application that she had tried to approach her advocate immediately after rejection of the maintenance application has remained uncontroverted. This is not the case of absence of diligence or due care. The learned Sessions Judge ought to have granted the application for condonation of delay and the revision application was required to be decided on merits. Nobody's case should be thrown out merely on technical formality when the lady especially approaches the Court for maintenance with tremendous difficulties. Justice is not only to be done but it should appear to have been done. Therefore, in the facts and circumstances of this case, this court is inclined to allow this Revision Application.

#. Hence, the Criminal Revision Application is allowed. The order passed by the learned Additional Sessions Judge, Ahmedabad (Rural) rejecting the application for condonation of delay dated 11th May, 1999 is hereby quashed and set aside. The delay of 78 days in preferring the revision application before the Court of Sessions of District Ahmedabad Rural is ordered to be condoned. The revision application is ordered to be restored and the learned Additional Sessions Judge is directed to hear and dispose of revision application on merits and in accordance with law, as expeditiously as possible, preferably within 6 months from the date of receipt of this order. Rule is made absolute accordingly. Direct service permitted.

Date : 22-9-1999 [C.K.Buch,J.]

#kailash#